THE ADVANTAGES AND DEFECTS OF COMPULSORY ARBITRATION

By Frank T. Carlton,
Albion College, Albion, Michigan.

In the discussion of a vital and important economic problem such as the one now under consideration, in order that the essential matters may be clearly set forth and that the reader may understand exactly what the writer is driving at, it is unfortunately necessary to give careful attention to the meaning of certain terms used. At the outset, consequently, the words "advantages and defects" need consideration. These two familiar terms are capable of rather exact and satisfactory definition when applied to an engineering policy or to a method used by the stock breeder or the market gardener. But when the advantages or defects of a given economic or political policy are considered, new difficulties arise and unusual complications appear. What standard or yardstick can be used for the purpose of measuring advantage or defect? Theoretically, any economic or political program should be deemed advantageous or desirable when it promotes the welfare of society. But the man possessed of a knowledge of practical affairs and of different types and classes of people immediately makes a further and pertinent inquiry. From what angle of vision is the welfare of society to be looked upon? Even the casual observer of industrial and labor problems must admit that what seems advantageous to an employer or a large stockholder in a big corporation often is urged as a defect by the employes of that company; and that which appears desirable to an outsider may be bitterly opposed by those on the inside.

Therefore, in any discussion of the advantages and defects of a policy affecting the relations of labor and capital, it is quite essential that a preliminary statement be offered disclosing the point of view of the writer. In this consideration of arbitration, the following fundamental points are subscribed to: 1. It is desirable that American wage-earners be organized into unions, and that these labor organizations be recognized and bargained with by the employers

Our government should no longer assume the attitude of indifferent neutrality. The right of wage workers to organize without interference on the part of employers should be given definite legal recognition. 2. A rising standard of living for American workingmen is favored. 3. Peace in industry is held to be highly desirable unless obtained at the expense of the self-respect and the standard of living of the wage-earners. Conclusions in regard to arbitration will doubtless be reached which cannot be acquiesced in by those who do not accept all or any one of these fundamental premises; and the reasoning used will certainly be condemned unless viewed in the light of these basic principles.

Arbitration is an orderly form of procedure for the settlement of industrial disputes as to wages, hours of labor and other working conditions. As a consequence of its use, resort to such weapons as strikes, boycotts, lockouts or blacklists, is obviated. The court or board of arbitration should be composed wholly of persons who do not represent either the employers or the employes; or, if representatives of the two opposing interests are given places on the board, the balance of power must be held by others. In short, the decisions of a board of arbitration are actually made by persons supposed to be neutral in their sympathies and interests. Boards in which the balance of power does not rest with the neutrals or the representatives of the general public should not be designated as boards of arbitration.

In regard to the subject matter considered, arbitration is of two general types: primary and secondary. The second form deals with disputes arising from the interpretation of the terms of a contract already entered into. Primary arbitration, on the other hand, is concerned with the determination of the conditions of employment,—wages, hours of labor, etc. Again, arbitration may be voluntary or compulsory. If voluntary, the two parties agree to accept the findings of the board. If compulsory, the law provides for the reference of industrial disputes to the board, and provides penalties if the findings of the board are disregarded or if a strike or lockout takes place. Arbitration practically implies the recognition of some form of labor organization. This discussion will be limited to a consideration of compulsory primary arbitration.

The advantages of the policy of settling industrial disputes by means of arbitration are easily presented. Arbitration, successfully

employed, means peace in industry instead of war. It prevents strikes, lockouts and boycotts; and business activities may go forward without danger of periodic interruption. The great losses from such interruptions are not incurred; and the friction between employers and employes incident to strikes, boycotts or even the more orderly processes of collective bargaining, is eliminated. A judicial or quasi-judicial determination of controverted points is substituted for the cruder and more direct appeal to the strength of organized labor on the one hand and of organized capital on the other. It may, with a reasonable degree of fitness, be compared with the substitution of court procedure for the feud and the duel.

The defects of the policy of arbitration are more difficult of presentation. More subtle considerations are involved and the clashing of divergent interests and points of view come much more clearly into the foreground.

1. The most serious defect in a system of compulsory arbitration grows out of the absence of any definite and generally accepted standard for the determination of a wage rate. No theory of wages, now formulated, has satisfactorily stood the test of criticism and of practical application in the industrial world; and no board of arbitration has been able to present a scientific standard by means of which disputes as to wage rates may be authoritatively and accurately settled. Consequently, boards of arbitration have as a rule compromised in fixing wage scales. When more than a mere compromise between opposing demands has been attempted, arbitrators have been influenced by a knowledge of what has been paid in the past in the industry under investigation, or what is now being paid in other shops and localities; or they have rested their decision upon the basis of the standard of living by them considered adequate for the wage workers concerned. The first alternative spells fixity, and will be further discussed under the head of the fourth defect.

The second method cannot be considered scientific so long as no definite concept of the standard of living exists. In fixing railway rates the Interstate Commerce Commission has certain fairly definite items as points of departure, such as the actual investment, the depreciation, market rates of interest, the cost of operation. In the determination of a wage award, the standard of living is such an indefinite concept that difficulties arise which prevent any scien-

tific award. Some of the problems are: What is the standard of living? Should it gradually rise as the years go by? Should an allowance be made for the physical deterioration of the worker? Should an allowance be made for insurance against old age, sickness and accident?

A recent dictum of the Ohio Industrial Commission throws an interesting sidelight upon the fundamental problems of a board of arbitration. "Exact industrial justice would not take into consideration the demands of the employes or the proposals of employers, but would be determined after a full investigation and inquiry into the cost of production, cost of maintaining a satisfactory standard of living, distribution of profits, and all other such matters." A brief study of this plan will disclose numerous practical difficulties. What is a "satisfactory standard of living"? To whom is it satisfactory? Does cost of production include a fair profit? And what is a "fair profit"? From whose point of view is it fair? What would be the proper "distribution of profits"? And, what of "all other such matters"? Since almost all industrial disputes directly or indirectly touch the question of wages, obviously, the first and foremost defect of arbitration offers almost unsurmountable obstacles in the present state of the science of economics. It will certainly be difficult to apply the much-discussed "rule of reason."

2. The substitution of arbitration for the strike, boycott or the trade agreement in the settlement of industrial disputes will tend to weaken organized labor or at least greatly to modify the form and programs of such organizations. The reason for this consequence is not difficult of discernment. Labor organizations have been formed to obtain by means of collective bargaining or militant activities, higher wages, a shorter working day or some other improvement in working conditions. Unionists are loyal to the union and cheerfully pay dues only when they believe that the organization is a potent instrumentality to assist them in obtaining their demands. If arbitration becomes the accepted method of determining the wage rate, the necessity for the union becomes less clear to the average unionist. The resort to arbitration will not stimulate self-reliance and self-assertion among the workers. Of course, from certain points of view this seems an advantage rather than a defect. In a personal letter, the editor of a well-known labor journal questions whether arbitration "has been of much practical value in giving

the workers those opportunities for self-assertion" which are "necessary for their welfare if they are to take an active part in the determination of what their terms of employment and conditions of labor will be."

3. Arbitration involves the intervention of a third party. The members of a board of arbitration who are supposed to be neutral and to represent the public, as a rule, are not familiar with the conditions in the industry. This fact adds to the difficulties in formulating a scientific judgment which will stand the test of rigorous criticism; and it does not inspire either side with confidence in boards of arbitration. Wage workers naturally hesitate to place the determination of matters which vitally touch their chief business in life in the hands of outsiders more or less ignorant of conditions in the industry and also of their point of view.

4. The procedure of a board of arbitration resembles that of a court; it is judicial in its methods. Therefore, precedent plays a large part in the deliberation of a board of arbitration. Since labor is struggling upward toward a higher standard of living and toward higher social standards, labor organizations look with suspicion upon any institution or method of procedure in which precedent plays a considerable rôle. Precedent for wage workers spells slavery, serfdom or low standards of living and social inferiority. Laboring men and women are struggling to get out of the "servant" class. They want to be recognized as "equals" of their employers and the managers of the business in which they are earning a living. Wage workers are eagerly looking forward to the day when labor as well as capital shall have a voice in determining the conditions in industry, to the time when the representatives of the employes shall be admitted to the meetings of the boards of directors. Compulsory arbitration would seem to offer little opportunity to press forward along this line.

Again, in case no definite legal principles can be invoked, the decisions of the board depend in no small measure upon the training, interests and idiosyncracies of the judge or umpire. It has been noted that no fundamental principles which are of general acceptance can be laid down for the guidance of boards of arbitration. Consequently, there is reason for the assertion made by labor leaders that the decisions of boards of arbitration depend upon the personal bias and the preconceived notions of the arbitrators. In the event of the

adoption of compulsory arbitration in this country, the choice of arbitrators or of those officials whose duty it would be to make such selection, would inevitably become a political issue. And, further, political considerations would become determining factors in the rigid or the flabby enforcement of the law.

5. The decisions of a board of arbitration, particularly when adverse to the workers, are difficult of enforcement. It might involve the necessity of penalizing large numbers of citizens.

6. Except in a few basic or quasi-public industries, a law providing for compulsory arbitration would probably be held unconstitutional.

An incidental weakness or defect of arbitration is due to the lack of a consistent policy for or against it on the part of both employers and wage workers. Neither employers nor employes at all times and under all circumstances take the same attitude toward arbitration. In some cases, unionists demand arbitration; again, they reject such proposals. Likewise, employers sometimes favor arbitration; and, again, they contemptuously reject it. Employers usually stand for arbitration in industries when the unions are strong as in the railway industry. But in other industries where organized labor is weak or has been eliminated, the employers insist upon their right to run their business without interference.

The United States Steel Corporation has not attracted much attention as an advocate of voluntary or compulsory arbitration in its own plants; and the copper companies of northern Michigan are not well-known friends of these measures. Less than half a decade ago, the president of a New York City street railway company sternly informed the employes of the company that they were his servants and that he expected them to do his bidding. "Arbitration between my servants and me is impossible." How different was the attitude of the steam railway presidents in 1916! On the other hand, the anthracite coal miners in 1902 were quite willing to arbitrate their differences with the operators; but, in 1916, the railway brotherhoods rejected arbitration. The progress of compulsory arbitration in Australasia in recent years is partially due to "the demand of employers for protection against more powerful unions."[1] But the first law passed in New Zealand in 1894, was favored by the union men of the island and opposed by the employers.

[1]Commons and Andrews, *Principles of Labor Legislation*, p. 143.

No scheme for the adjustment of industrial disputes is without defects; but, in the opinion of the writer, the defects of compulsory arbitration outweigh its advantages. Nevertheless, in view of the rapid growth in numbers and importance of industries affected with unmistakable public interest, it seems quite probable that unless employers and organized labor can settle their differences by collective bargaining and trade agreements or in some other manner not requiring resort to industrial warfare and chaos, compulsory arbitration with its defects and its advantages or a system similar to that being tried in Canada, will be adopted as the legal remedy. In case of a great strike tying up, for example, a large railway system or the coal industry the demand for industrial peace will become so insistent that some legislative remedy or palliative will be enacted.

If this diagnosis of the situation be fairly accurate, the following conclusions may be offered. Associations of employers and unions of wage workers must face the welcome or unwelcome indications that if they cannot compromise their differences by collective bargaining and thus avoid industrial warfare, legal coercion will be used to adjust the matter according to the findings of boards in which the balance of power is held by men from the outside appointed by public officials. The law court system of adjusting personal and group disputes and quarrels is by no means perfect; but very few individuals favor a return to the medieval system of settlement by personal combat and feudal warfare. If organizations of wage workers and of employers cannot bring about industrial peace, they must suffer the consequences whatever such consequences may be. It is, however, by no means certain that compulsory arbitration will achieve industrial peace. It has not in New Zealand or in New South Wales. Because of the political weakness of organized labor in the United States, the drafting and the enforcement of compulsory arbitration laws will doubtless, as a rule, be under the control of persons not recognized as friends of organized labor. Under such circumstances it may not be anticipated that this legislation will be very distasteful to the business interests of the nation.